

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>PHILLIP SMITH</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 168,584
<b>HAVEN STEEL PRODUCTS</b>	)	
Respondent	)	
AND	)	
	)	
<b>ST. PAUL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

On June 20, 1995, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge George R. Robertson came on for oral argument by telephone conference.

**APPEARANCES**

Claimant appeared by and through his attorney, E. Dexter Galloway of Hutchinson, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Scott J. Mann of Hutchinson, Kansas. The Kansas Workers Compensation Fund appeared

by and through its attorney, Randall C. Henry of Hutchinson, Kansas. There were no other appearances.

### **RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board. In addition, a stipulation has been filed regarding the attorney fee lien of Brian Pistotnik indicating this matter was resolved by agreement dated May 11, 1995. As such, the attorney fee lien dispute is resolved and will not be considered by the Appeals Board.

Additionally, the Appeals Board has been notified by the parties that an agreement has been reached between respondent and claimant regarding the nature and extent of claimant's injury and/or disability with said agreement being dated October 2, 1995. As such, the nature and extent of injury and/or disability is no longer at issue and will not be decided by the Appeals Board.

### **ISSUES**

- (1) What, if any, is the liability of the Kansas Workers Compensation Fund?

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge dealing with the issue of the liability of the Kansas Workers Compensation Fund sets out findings and conclusions in detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge found July 7, 1992, to be claimant's date of accident. There was no appeal taken from that finding. The Administrative Law Judge also found

that claimant suffered one continuous injury with that injury being bilateral in nature. According to the testimony of Dr. J. Mark Melhorn, claimant did not suffer a second injury for which liability can be placed upon the Kansas Workers Compensation Fund.

Therefore, the Appeals Board finds there is no liability to the Kansas Workers Compensation Fund in this matter.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge George R. Robertson dated January 30, 1995, should be, and is hereby, affirmed in all respects with regard to the liability of the Kansas Workers Compensation Fund.

The findings by the Administrative Law Judge in the Award dealing with claimant's entitlement to temporary and permanent benefits, future medical, unauthorized medical, and any attorney fee lien or arrangements between claimant and his current attorney were not addressed by the Appeals Board, having been resolved prior to this opinion.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Owens, Brake & Associates	
Regular Hearing Transcript	\$338.97
Patty Morton, C.S.R.	
Deposition of Pat Blackard	\$ 93.50
Kelley, York, & Associates, LTD.	
Deposition of Dr. Mark Melhorn	\$402.12
Deposition of James Molski	\$193.92
Deposition of Dr. Ernest Schlachter	\$193.02

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: E. Dexter Galloway, Hutchinson, KS  
Scott J. Mann, Hutchinson, KS  
Randall C. Henry, Hutchinson, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director